142

No. 08-1120

Supreme Court, U.S.
FILED
OCT 7 - 2009
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

AMERICAN HOME PRODUCTS CORP. D/B/A WYETH, ET AL.,
Petitioners,

v.

MARCELO A. FERRARI AND CAROLYN H. FERRARI,
INDIVIDUALLY AND AS PARENTS AND NEXT FRIEND OF
STEFAN R. FERRARI,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

SUPPLEMENTAL BRIEF FOR RESPONDENTS

LANNY B. BRIDGERS
Counsel of Record
260 Peachtree Street
Suite 2000
Atlanta, Georgia 30303
(404) 522-0150

Counsel for Respondents

October 7, 2009

Respondents respectfully submit this supplemental brief pursuant to this Court's Rule 15.8 to advise the Court that Respondents have voluntarily dismissed their claims in the present case without prejudice and that the case is therefore moot. *See Board of License Comm'rs v. Pastore*, 469 U.S. 238, 239-40 (1985) (per curiam).

On September 21, 2009, Respondents filed a "Voluntary Notice of Dismissal Without Prejudice" in the State Court of Fulton County pursuant to Georgia Code § 9-11-41(a) and gave notice of such voluntary dismissal pursuant to § 41(a)(1)(A) of the Georgia Civil Practice Act. *See* App., *infra*, 1a-2a. Georgia courts have liberally construed plaintiffs' right to dismiss a case voluntarily and without prejudice. *See, e.g., McKesson Corp. v. Green*, 648 S.E.2d 457, 461-62 (Ga. Ct. App. 2007). Under Georgia law, the voluntary dismissal was proper and thereby terminated the present litigation.

In light of the voluntary dismissal, there is no longer a live case or controversy, such that the case is moot. Because this Court no longer has Article III jurisdiction over the case, the Court should dismiss the petition. *See DeFunis v. Odegaard*, 416 U.S. 312, 319-20 (1974) (per curiam).

This case does not fall into any of the narrowly circumscribed exceptions to the mootness doctrine. It is not "capable of repetition, yet evading review." *Southern Pac. Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911). As in *DeFunis*, there is no reason that future litigation raising the same questions at issue here will evade review, unlike cases dealing with pregnancy or elections. *See DeFunis*, 416 U.S. at 318-19; *see also Roe v. Wade*, 410 U.S. 113, 125 (1973). Neither does this case involve the cessation of illegal

conduct, which a party might easily resume. *See, e.g., City of Erie v. Pap's A.M.*, 529 U.S. 277, 287-89 (2000). Finally, it does not implicate a situation in which the Court has devoted extensive resources to a case after having granted certiorari. *See Honig v. Doe*, 484 U.S. 305, 331-32 (1988) (Rehnquist, C.J., concurring).

In short, although the present case is moot, the Court will likely have ample opportunity to review the federal questions presented in the context of an actual case or controversy.

* * *

For the foregoing reasons, this Court should dismiss the petition in the present case as moot.

LANNY B. BRIDGERS
Counsel of Record
260 Peachtree Street
Suite 2000
Atlanta, Georgia 30308
(404) 522-0150

Counsel for Respondents

October 7, 2009

APPENDIX

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

Civil Action File No. 02VS031404F

MARCELO A. FERRARI AND CAROLYN H. FERRARI, INDIVIDUALLY AND AS PARENTS AND NEXT FRIEND OF STEFAN R. FERRARI,
PLAINTIFFS

V.

AMERICAN HOME PRODUCTS CORP. ET AL.,
DEFENDANTS

[filed Sept. 21, 2009]

VOLUNTARY NOTICE OF DISMISSAL WITHOUT PREJUDICE

NOW COME PLAINTIFFS MARCELO AND CAROLYN FERRARI and give notice, pursuant to Section 41(a)(1)(A) of the Georgia Civil Practice Act, of their dismissal of the above-styled action without prejudice.

This 21st day of September, 2009.

/s/ LANNY B. BRIDGERS
Lanny B. Bridgers
State Bar No. 080500

260 Peachtree Street
Suite 2000
Atlanta, Georgia 30303
404-522-0150

R. G. TAYLOR II, P.C.
& Associates

/s/ JAMES C. FERRELL
James C. Ferrell
Texas Bar No. 00785857

3400 One Allen Center
Houston, Texas 77002
Tel: (713) 654-7799

Attorneys for Plaintiffs